

December 13, 1991

The Honorable Sharon Miyashiro
Director
Department of Personnel Services
830 Punchbowl Street
Honolulu, Hawaii 96813

Dear Ms. Miyashiro:

Re:Disclosure of Civil Service Applications
to Other State Agencies

This is in response to a letter, dated June 5, 1990, from Alfred C. Lardizabal, former director, Department of Personnel Services ("DPS"), requesting an advisory opinion regarding whether the DPS may disclose certain civil service applications to other State agencies for a limited purpose.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the DPS may disclose the applications of unsuccessful applicants for a certain civil service class to State agencies seeking to fill emergency or temporary positions in the same or a related civil service class.

BRIEF ANSWER

Individually identifiable information about unsuccessful employment applicants, including their applications and exam scores, must be kept confidential because this information is protected by the UIPA exception for "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. . 92F-13(1) (Supp. 1990). The OIP has previously concluded that information about

unsuccessful applicants also falls under the UIPA exception for "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." Haw. Rev. Stat. . 92F-13(3) (Supp. 1990).

Section 92F-19, Hawaii Revised Statutes, sets forth the conditions under which an agency is permitted, although not required, to disclose confidential government records to another government agency. Except for applicants' exam scores, we believe that the DPS may disclose civil service applications of unsuccessful employment applicants to agencies seeking temporary or emergency hires for the same or a related class because this disclosure would satisfy several conditions for inter-agency disclosure under section 92F-19(a), Hawaii Revised Statutes. Specifically, this disclosure would be "[c]ompatible with the purpose for which the information was collected or obtained," "[c]onsistent with the conditions or reasonable expectations of use and disclosure under which the information was provided," and "[r]easonably . . . proper for the performance of the requesting agency's duties and functions." Haw. Rev. Stat. . 92F-19(a) (Supp. 1990).

However, we do not believe that section 92F-19(a), Hawaii Revised Statutes, permits the DPS to disclose the unsuccessful applicants' exam scores to agencies recruiting for temporary or emergency positions. Therefore, before the DPS may disclose an unsuccessful applicant's application to an agency, the DPS must segregate and remove any information setting forth the applicant's exam score. Also, unlike civil service applications submitted to the DPS for a class of positions in several agencies, applications submitted specifically and exclusively to a government agency for an exempt position should not be disclosed to the public or any other agency.

FACTS

The "Civil Service Law," chapter 76, Hawaii Revised Statutes, requires the DPS to "[c]reate and adjust classes of positions and adopt class specifications including title, description of typical duties and responsibilities, statement of training and experience and other requirements to be met by applicants, covering all positions." Haw. Rev. Stat. . 76-13 (8)(A) (Supp. 1990). In anticipation of several vacancies, at one or more State government agencies, within a class of positions established under this statute ("class"), the DPS will announce that the class is open for applications. By submitting

applications for an open class ("civil service applications") to the DPS, interested individuals apply for employment to any of the agencies that may have a vacant position within that class.

As required by chapter 76, Hawaii Revised Statutes, the DPS administers a competitive examination ("exam") of applicants who meet the minimum requirements of that class. The exam may consist of one or more of the following: a written or oral aptitude test, a demonstration of manual skills, or an objective ranking of an individual's relevant training and experience. The DPS ranks the applicants on a list of eligibles for that class according to their exam scores.

When a State agency has a vacant position in a class, the agency is generally required by chapter 76, Hawaii Revised Statutes, to hire an individual named on the certified list of eligibles that the DPS provides to the agency upon request. To establish a certified list of eligibles for an available position in a class, the DPS sets forth the names of the top five individuals from the appropriate lists of eligibles, namely those five individuals who received the highest scores on the exam for that class, and who also meet the employment conditions of the particular position, for example, geographic location, part-time work, or a limited employment period. The hiring agency will typically interview these five individuals separately and, thereafter, make its selection.

The DPS does not disclose to the hiring agency the exam scores of those individuals listed on the certified list of eligibles. According to the DPS, the specific exam scores of the certified eligibles are not relevant to an agency's selection. Instead, the exam scores primarily serve the DPS' purpose of creating a certified list of eligibles as required by chapter 76, Hawaii Revised Statutes.

In accordance with chapter 76, Hawaii Revised Statutes, the DPS may authorize State agencies to fill certain temporary or emergency civil service positions without using a certified list of eligibles from the DPS. Haw. Rev. Stat. . 76-31 (1985 and Supp. 1990). The DPS delegates to the authorized agencies the responsibility of recruiting and hiring for such temporary or emergency positions. Interested individuals must apply directly to those agencies for employment in these positions.

In order to find individuals who may be interested in temporary or emergency positions in a certain class, several

State agencies have requested the DPS to disclose the civil service applications that it received for the same class, or a related class, for example, one that has either more or less of the same responsibilities and requirements and, therefore, a different classification. These State agencies have requested to see the pool of applications of individuals on the lists of eligibles, as well as the pool of applications rejected by the DPS because the applicants did not meet the minimum requirements at the time of application or did not pass the exam. The DPS currently does not disclose the civil service applications of these applicants who have not been hired ("unsuccessful applicants") to the interested agencies.

The DPS requested an advisory opinion regarding whether it can disclose the civil service applications submitted for a certain class to State agencies that want to contact and encourage the unsuccessful applicants to apply for temporary or emergency civil service positions in the same or a related class.

DISCUSSION

In previous advisory opinions, we concluded that individually identifiable information about unsuccessful employment applicants, including their applications and exam scores, must be kept confidential because this information is protected by the UIPA exception for "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. . 92F-13(1) (Supp. 1990); see OIP Op. Ltr. No 91-8 (June 24, 1991) (commission and board applications); OIP Op. Ltr. No. 90-14 (March 30, 1990) (certified list of eligibles); OIP Op. Ltr. No. 89-2 (Oct. 27, 1989) (executive search report). In reaching this conclusion, we balanced the competing privacy and public interests in the disclosure of information about unsuccessful applicants. Haw. Rev. Stat. . 92F-14(a) (Supp. 1990) (the UIPA privacy exception does not apply "if the public interest in disclosure outweighs the privacy interests of the individual").

Specifically, the UIPA recognizes that an individual has a significant privacy interest in "applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position." Haw. Rev. Stat. . 92F-14(b) (4) (Supp. 1990) (emphases added). With regard to application information identifying unsuccessful applicants for a government position, we opined that the disclosure of this

information would not serve the public's interest in "what government is up to" because this disclosure "is unnecessary for the public to evaluate the competence of people who were appointed." Core v. United States Postal Service, 730 F.2d 946, 949 (4th Cir. 1984); see OIP Op. Ltr. Nos. 91-8, 90-14, and 89-2.

Furthermore, we previously concluded that information about unsuccessful applicants also falls within the UIPA exception for "[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function." Haw. Rev. Stat. . 92F-13(3) (Supp. 1990). In reaching this conclusion, we found that the disclosure of this information would discourage other qualified applicants from applying for government employment. See OIP Op. Ltr. Nos. 91-8, 90-14, and 89-2.

Based upon the same analysis set forth in the OIP opinions cited, we believe that the civil service applications of individuals who have not yet been hired are not publicly disclosable under the "clearly unwarranted invasion of privacy" and the "frustration of a legitimate government function" exceptions of the UIPA. See Haw. Rev. Stat. . 92F-13(1), (3) (Supp. 1990). Although the civil service applications of these unsuccessful applicants should not be disclosed to the public, we next must consider whether the UIPA permits their disclosure to other government agencies.

Section 92F-19, Hawaii Revised Statutes, permits, but does not require, the disclosure of confidential records to another government agency under certain conditions and, in relevant part, provides:

.92F-19 Limitations on disclosure of government records to other agencies. (a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

- (1) Compatible with the purpose for which the information was collected or obtained;
- (2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;

(3) Reasonably appears to be proper for the performance of the requesting agency's duties and functions;

Haw. Rev. Stat. . 92F-19(a)(1), (2), (3) (Supp. 1990). An agency that receives confidential information from another agency pursuant to section 92F-19(a), Hawaii Revised Statutes, "shall be subject to the same restrictions on disclosure of the records as the originating agency." Haw. Rev. Stat. . 92F-19(b) (Supp. 1990).

We previously examined the legislative history behind section 92F-19(a), Hawaii Revised Statutes, and concluded that the paragraphs in this section, which set forth the conditions under which inter-agency disclosure is permitted, are written in the disjunctive. See OIP Op. Ltr. No. 90-9 (Feb. 26, 1990). Hence, section 92F-19(a), Hawaii Revised Statutes, permits disclosure of confidential records to another agency if the disclosure satisfies at least one of the conditions set forth in that section. See OIP Op. Ltr. No. 91-18 (Oct. 15, 1991) (discussion of the legislative history behind section 92F-19, Hawaii Revised Statutes).

According to the facts presented, in order to fill temporary or emergency civil service positions in a class, several State agencies have requested the DPS for permission to inspect the applications of individuals who applied for positions in the same or a related class and have not yet been hired. We believe that the DPS' disclosure of these individuals' civil service applications to other agencies for this purpose satisfies several conditions for inter-agency disclosure under section 92F-19(a), Hawaii Revised Statutes.

First, we find that the DPS' disclosure of civil service applications to other agencies would be "[c]ompatible with the purpose for which the information was collected or obtained." Haw. Rev. Stat. . 92F-19(a)(1) (Supp. 1990). Specifically, we believe that the agencies' hiring needs to fill temporary or emergency civil service positions in a certain class are reasonably "compatible" with the applicants' submission of applications for the purpose of seeking State civil service employment in the same or related class. See Britt v. Naval Investigative Services, 886 F.2d 544, 549 (3d Cir. 1989) (to meet the standard of "compatibility," there must be "some meaningful convergency between the disclosing agency's purpose for gathering the information and in its disclosure").

Furthermore, because a civil service class may encompass several similar positions and several agencies offering such positions, an applicant who submits an application for a specific class reasonably expects to be considered for employment by several agencies and for one or more positions in the same civil service class. The applicant may wish, and even expect, to be also considered for a temporary or an emergency position in the same class or a related class. Often, an applicant does not apply directly for such positions because the applicant does not know of their availability, or may even assume that the application to the DPS is also used to hire for these positions as well. Consequently, we believe that the DPS' disclosure of civil service applications received for a specific class to other State agencies hiring for temporary or emergency positions in the same or a related class is "[c]onsistent with the conditions or reasonable expectations of use and disclosure under which the information was provided." Haw. Rev. Stat. . 92F-19(a) (2) (Supp. 1990).

We also find that the disclosure of civil service applications to the requesting agencies would assist them in exercising their delegated authority to recruit and hire qualified personnel for temporary or emergency civil service positions. Specifically, the pool of civil service applications that the DPS receives for a particular class identifies individuals who are interested in employment in that class and have set forth their qualifications for it. In our opinion, it is reasonable to believe that agencies may find potential recruits from this pool of unsuccessful applicants for temporary or emergency positions in the same or a related civil service class. Therefore, in our opinion, this disclosure "[r]easonably appears to be proper for the performance of the requesting agency's duties and functions." Haw. Rev. Stat. . 92F-19(a) (3) (Supp. 1990).

Because we find that the DPS' disclosure of the unsuccessful applicants' civil service applications for a certain class to hiring agencies would fulfill one or more of the conditions for inter-agency disclosure, the DPS may share these applications, except for exam scores as discussed below, with the other agencies for their recruitment efforts in the same or a related class. Although this disclosure is authorized under section 92F-19(a), Hawaii Revised Statutes, we suggest that, in the future, the DPS request applicants to indicate on their applications, or on a separate form, whether they agree to permit their applications to be referred to State agencies hiring for temporary or emergency positions in the same or a

related class. In this way, applicants can clearly give their consent for such referrals, and the agencies can readily identify these interested applicants.

However, we do not believe that section 92F-19(a), Hawaii Revised Statutes, permits the DPS to disclose the unsuccessful applicants' exam scores to agencies for their recruitment and hiring for temporary or emergency civil service positions. Currently, the DPS does not disclose the exam scores of any applicants, including the scores of those applicants named on a certified list of eligibles, to any other agency. According to the DPS, the specific exam scores of individuals named on a certified list of eligibles are not relevant to a hiring agency's selection, but instead are useful only to the DPS for establishing a certified list of eligibles as required by chapter 76, Hawaii Revised Statutes. We note that the individuals' rankings on the certified list of eligibles show the order of the individuals' scores without actually revealing the specific scores. However, based upon interviews of the individuals named on the certified list of eligibles, the hiring agency may select any one of the individuals interviewed without regard to the individual's ranking on the certified list.

Similarly, we do not believe that unsuccessful applicants' civil service exam scores are relevant to an agency's need to fill temporary or emergency positions. An agency would know whether an applicant is an eligible or was rejected based upon the pool of applications in which the DPS filed the individual's application. Yet, we believe that the disclosure of the applicant's specific exam score would not further an agency's hiring purposes, just as it would not an agency's selection from a certified list of eligibles.

Thus, we find that the disclosure of an applicant's exam score for an agency's recruitment use would not be "[c]ompatible with the purpose for which the information was collected;" "[c]onsistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;" or "[r]easonably . . . proper for the performance of the requesting agency's duties and functions." Haw. Rev. Stat. . 92F-19(a)(1), (2), (3) (Supp. 1990). Therefore, before the DPS may disclose an applicant's application to an agency, the DPS must segregate and remove any information setting forth the applicant's exam score.

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Lastly, although we have concluded that the DPS may disclose civil service applications to other State agencies needing to fill temporary and emergency civil service positions in the same or a related class, we do not believe that agencies are permitted to disclose to other agencies the applications received for exempt positions. Unlike civil service applications that are submitted to the DPS for employment in any agency with an available position within that class, an application submitted for an exempt position is sent specifically and exclusively to that agency having the exempt position. In view of this major difference between civil service applications and applications for an exempt position at a specific agency, we find that the disclosure of applications for exempt positions to other agencies would not satisfy any of the conditions for inter-agency disclosure set forth in section 92F-19, Hawaii Revised Statutes.

CONCLUSION

Except for applicants' exam scores, the DPS may disclose the unsuccessful applicants' civil service applications for a certain class to agencies seeking temporary or emergency hires in the same or a related class because this disclosure satisfies several conditions for inter-agency disclosure under section 92F-19(a), Hawaii Revised Statutes. However, we do not believe that section 92F-19(a), Hawaii Revised Statutes, permits the DPS to disclose applicants' exam scores to agencies for this purpose. Therefore, before the DPS may disclose an application to a recruiting agency, the DPS must segregate and remove any information setting forth the applicant's exam score.

Very truly yours,

Lorna J. Loo
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

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